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Place of Employment as a "Principal Place of Business" Under the Bankruptcy Act - Higgins v. State Loan Company

PLACE OF EMPLOYMENT AS A "PRINCIPAL PLACE OF BUSINESS" UNDER THE BANKRUPTCY ACT

Higgins v. State Loan Company[1]

Appellant, employed for several years in the District of Columbia, by an electric company, as an "electrical installer", had resided and been domiciled in Maryland for four years prior to the filing of his voluntary petition in the bankruptcy court of the District of Columbia. The appellee creditor, on the theory that petitioner's employment by another did not constitute a "place of business" within the meaning of Section 2 of the Bankruptcy Act, moved to dismiss the petition for want of jurisdiction. The referee denied the motion, but on review the District Court reversed his ruling and dismissed the petition for lack of jurisdiction. On appeal, the dismissal of the petition by the District Court was affirmed.

This rather novel question takes on special importance with the increasing tendency of urban workers to commute long distances to their places of employment. Research reveals no other appellate determination of this issue.

The Bankruptcy Act[2] gives the courts of bankruptcy jurisdiction to "Adjudge persons bankrupt who have had their principal place of business, resided or had their domicil within their respective territorial jurisdictions for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction . . .". The purpose of this provision of the Act is to compel proceedings to be maintained in the jurisdiction that will be geographically most convenient to the parties interested, chiefly the creditors. Active participation by creditors is thereby encouraged, presumably causing fraud more readily to be revealed and an undeserved discharge of the bankrupt more likely to be opposed. An adjudication in a jurisdiction inaccessible to creditors would not usually result in the thorough threshing out of these issues that would be possible when the adjudication is made in a jurisdiction convenient to the creditors. As regards objections to the bankrupt's discharge, this may not be of quite so much importance since the enactment of the Chandler Act,[3] which gives the trustee the right, on his own motion,

[1] 114 F. (2d) 25 (C. A. Dist. of Col., 1940).

[2] Section 2a, 11 U. S. C. A., Sec. 11a.

[3] Bankruptcy Act, Sec. 14b, 11 U. S. C. A., Sec. 32b; Section 47a, 11 U. S. C. A. 75a.

to resist the discharge. This right he did not have prior to the Chandler Act.[4]

In the principal case, the narrow issue before the Court was whether or not the place where a person engages in gainful activity, solely as a subordinate employee of another, is a "place of business" within the meaning of this provision of the Act. The ruling of the Court under the particular facts, that this is not such a "place of business", furthers the purpose of the above provision of the Act.

Whether or not using the test of convenience as the guiding principle in the determination of such an issue will invariably lead to the same result is debatable. Ordinarily, it would seem a reasonable presumption that a person living in one place and employed as a subordinate in another place, contracts few, if any, personal debts in the locality where he is employed. Such an employee would usually establish his credit at his place of residence or domicil and it is there that his creditors look to him for payment. To enable one in such circumstances to be adjudicated a bankrupt in the jurisdiction of his place of employment, where there is no "holding out" of assets, no establishment of a distinctive place of business of his own, but rather a perhaps unidentifiable employment for another, would be to invite undeserved discharges and the concealment of fraud.

A factual situation is not improbable, however, in which the majority or main creditors of the bankrupt would find the jurisdiction of the place of employment to be more convenient, and adjudication in such a District less apt to result in concealment of fraud, or the obtention of undeserved discharges. The Court, in the principal case, though citing the cases of *In Re Bailey*,[5] and *In Re Belcher*[6] as conflicting with the result reached in the main case, nevertheless said that they "apparently hold that employment in the District is sufficient [basis for jurisdiction]." By this phrasing, the Court may be recognizing the distinction based on the facts in the particular cases. In these two cases there are facts that would warrant a distinction. In both, the bankrupt had

[4] Prior to the Chandler Act, the Bankruptcy Act, Sec. 14, 11 U. S. C. A., Sec. 32, provided: ". . . the trustee shall not interpose objections to a bankrupt's discharge until he shall be authorized so to do by the creditors at a meeting of creditors called for that purpose on the application of any creditor." In re Schnoll, 44 F. (2d) 857 (S. D. N. Y., 1930).

[5] 2 Fed. Cas. 392, No. 753 (S. D. N. Y., 1868).

[6] 3 Fed. Cas. 79, No. 1237 (S. D. N. Y., 1868).

previously been in business for himself in the District of subsequent employment. Particularly is this brought out in the case of *In Re Belcher,*[7] where the bankrupt had for twenty years been in business for himself as a merchant in New York City. The bankrupt failed, moved his residence into New Jersey, and then continued to work as a clerk under his successor at the same place of business. Previous ownership of a business in the District wherein there is a subsequent employment for another may well be a fact which, when coupled with creditors whose claims were derived from transactions arising out of the prior business, would indicate a holding that an adjudication in that District would further the purpose of the Act. A similar holding might be extended to cover the case of a debtor who has obtained extensive personal credit or loans in the city of employment, as might readily happen to one occupying a responsible position as an employee of another, though residing elsewhere.

The question of determining the bankrupt's status as proprietor or employee might arise where he had been the prior owner of a business in the District but at the time of filing the petition he is merely an employee. If a court is to recognize such a distinguishing factor, should it be decided by analogy to the last sentence of Section 4 of the Bankruptcy Act, which determines whether or not the alleged bankrupt is a farmer or wage earner: "the status of an alleged bankrupt as a wage earner or a farmer shall be determined as of the time of the commission of the act of bankruptcy."? Or should the Court be guided solely by whether business or non-business creditors are primarily claiming in bankruptcy in determining jurisdiction?

It is conceivable that if a broader construction were given to the words "principal place of business" so as to permit the filing of a petition in the jurisdiction where an employee is employed, a proper elasticity could be achieved. This would be safeguarded from abuse, if the alleged bankrupt had committed an act of bankruptcy, by the provisions of Section 32[8] of the Bankruptcy Act. If creditors believe that the case should be transferred to

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[7] *Ibid.*

[8] Sec. 32, 11 U. S. C. A. 55: "Transfer of Cases. In the event petitions are filed by or against the same person or by or against different members of a partnership in different courts of bankruptcy each of which has jurisdiction, the cases shall, by order of the court first acquiring jurisdiction, be transferred to and consolidated in the court which can proceed with the same for the greatest convenience of parties in interest."

another jurisdiction because of the greater convenience of the parties in interest, they could file a petition in the more convenient jurisdiction and, if the court where the original petition was filed was of the same opinion, the case could be transferred as authorized by Section 32.

Any decision of a Court as to the basis of jurisdiction under Section 2 of the Bankruptcy Act should be applicable to the construction of those sections of the Act, dealing with jurisdiction over the debtor under Chapter XI, "Arrangements"[9]; Chapter XII, "Real Property Arrangements"[10]; and Chapter XIII, "Wage Earners' Plans".[11]

[9] Sec. 322, 11 U. S. C. A. 722.
[10] Sec. 422, 11 U. S. C. A. 822.
[11] Sec. 622, 11 U. S. C. A. 1022.